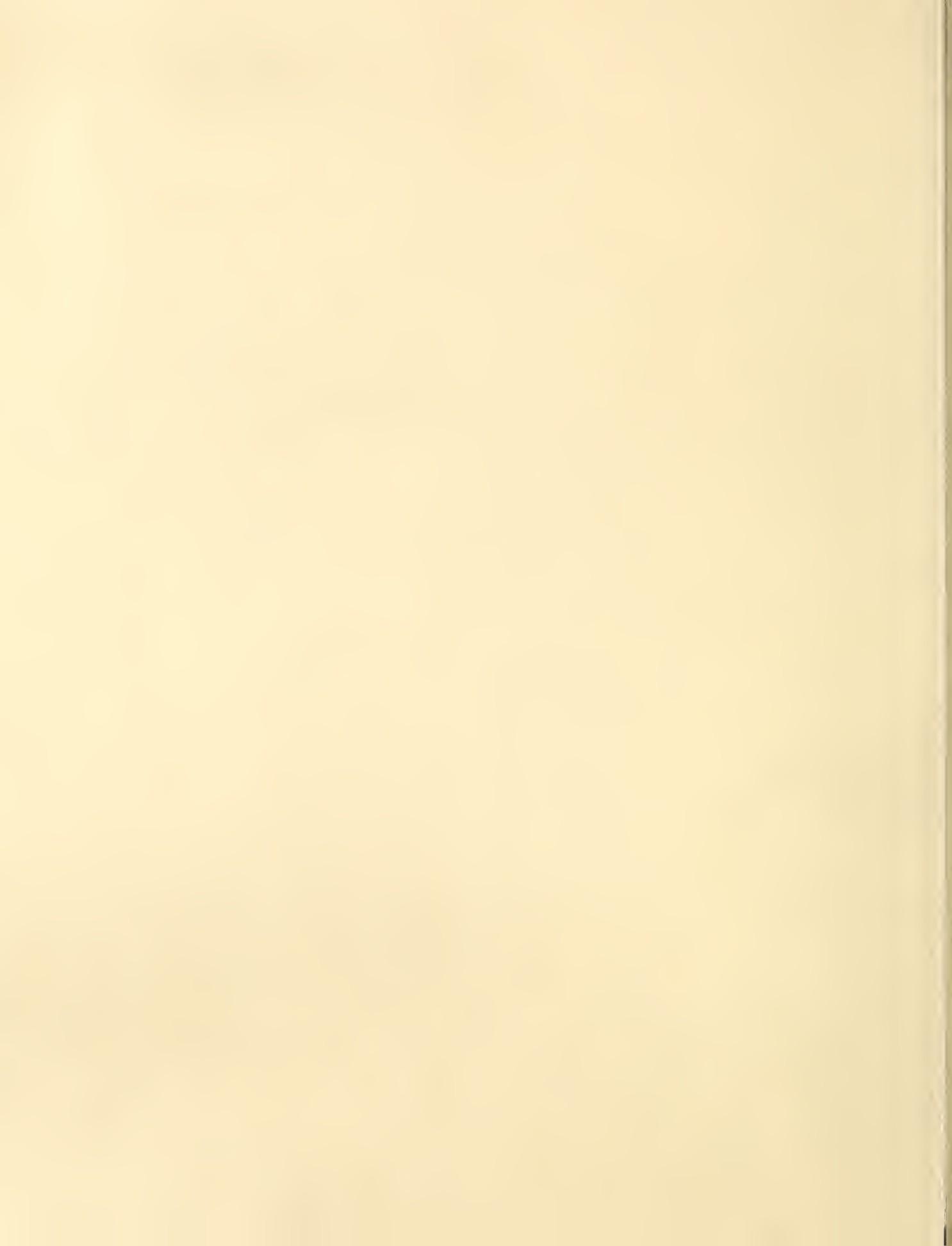


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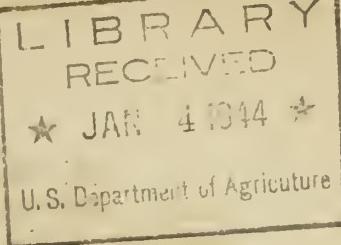
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UNITED STATES DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service



REVISED

REGULATIONS FOR THE ENFORCEMENT OF THE INSECTICIDE ACT OF 1910
EFFECTIVE OCTOBER 1, 1941

(Title 7, Ch. 1, Part 161 of the Code of Federal Regulations)

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Pursuant to the authority of section 3 of the Insecticide Act of 1910 (36 Stat. 331; 7 U.S.C. 127) we hereby make and publish the following rules and regulations for the enforcement of the Insecticide Act of 1910, to become effective on October 1, 1941.

These regulations shall supersede those previously promulgated and published as Part 180, Chapter I, Title 21, Code of Federal Regulations, which are hereby repealed.

DEFINITIONS

161.1 Meaning of words. Words in the regulations in this part in the singular form shall be deemed to import the plural, and vice versa, as the case may demand.

161.2 Terms defined. For the purpose of the regulations in this part, unless the context otherwise requires, the following terms shall be construed, respectively, to mean:

(a) "Act" means the Insecticide Act of 1910 (36 Stat. 331; 7 U.S.C. 121-134).

(b) "Person" means an individual, corporation, partnership, or two or more persons having a joint or common interest.

(c) "Chief of Service" means the Chief or Acting Chief of Agricultural Marketing Service, United States Department of Agriculture.

(d) "Package" includes the carton, box, barrel, or other receptacle into which an insecticide or fungicide, paris green, or lead arsenate is placed for use, handling, removal, shipment, or conveyance; a single container of such article or articles or several containers packed together, including both the immediate container of the material and the box, carton, or other container (if any) in which it is enclosed or displayed.

(e) "Unbroken package and original unbroken package" means the original package delivered by the shipper to the carrier at the initial point of interstate shipment, and also the unit package as ordinarily displayed on the shelves of the retail dealer or distributor.

(f) "Label" includes any legend and descriptive matter or design printed, stenciled, stamped, seared, or impressed upon the article or its container or wrapper, and also includes any circular, pamphlet, or other descriptive matter packed with or accompanying the article at any time while such article is in interstate commerce, and such letters, circulars, pamphlets, and other descriptive matter to which reference is made, either on the label attached to the package or on the package itself, or any circular, pamphlet, or other descriptive matter accompanying the package in interstate commerce.

(g) "Insect" means any of the numerous small invertebrate animals generally having the body more or less obviously segmented, for the most part belonging to the class Insecta, comprising six-legged, usually winged forms, as, for example, beetles, bugs, bees, flies, and to other allied classes of arthropods whose members are wingless and usually have more than six legs, as, for example, spiders, mites, ticks, centipedes, and wood lice.

(h) "Fungi" means all nonchlorophyll-bearing plants of a lower order than mosses and liverworts (i.e., nonchlorophyll-bearing thallophytes), as, for example, rusts, smuts, mildews, molds, yeasts, and bacteria.

(i) "Official inspector" means any employee of the Agricultural Marketing Service or other authorized inspector or agent of the Department of Agriculture or of the Treasury Department.

ADMINISTRATION

161.3 Authority. The Chief of Service is charged with the administration of the provisions of the Act and the regulations in this part and is authorized to issue such instructions as he may deem proper and necessary.

SAMPLES

161.4 Collection of samples. Samples shall be collected only by official inspectors.

161.5 Investigations. Official inspectors shall make investigations to locate shipments of products which may be in violation of the law; visit manufacturers and distributors and, with their consent, obtain information concerning insecticides and fungicides marketed by such parties, and records of interstate shipments; consult shipping records, such as those kept by railroad, express, and trucking companies, and visit wholesale and retail establishments and other places to locate interstate shipments of insecticides and fungicides.

161.6 Methods of examining samples. The methods of examining samples shall be those adopted and published by the Association of Official Agricultural Chemists (where applicable), and such other methods as may be necessary to determine whether or not the product and its labeling are in compliance with the law. These methods may

include chemical, microscopical, physical, and bacteriological methods, and tests in orchard, field, garden and greenhouse, on animals, in or about premises, in cages, in the laboratory, and in such other places as may be necessary.

161.7 Hearings. If, from the examination or analysis, a sample appears to be adulterated or misbranded within the meaning of the Act, notice in writing, setting forth the charges, shall be sent to the person who made, or offered to make, the shipment, and to any other interested person, giving him an opportunity to offer such explanation as he may desire, for consideration by the Department. Should any such person file, in addition to his reply in writing, a written request for an oral hearing, giving his reasons therefor, due consideration will be given to the question whether any useful purpose would be served by such a hearing.

No hearing will be granted prior to seizure action pursuant to section 10 of the Act.

VIOLATIONS

161.8 Report of violations. Requests for institution of prosecutions under sections 1 and 2 of the Act, and, where practicable, for proceedings under section 10 of the Act, will be made by the Secretary of Agriculture to the Attorney General. Where immediate action is necessary to secure the seizure of articles under section 10 and delay would result by reporting the facts to the Attorney General, the Secretary of Agriculture will communicate directly with the United States attorneys. In such cases, however, the Secretary of Agriculture will promptly furnish the Attorney General with a copy of the communication to the United States Attorney.

161.9 Publication. Publication shall be made of notices of judgment of the courts in cases arising under both the criminal sections (sections 1 and 2) and the seizure section (section 10) of the Act in the form of circulars, notices, or bulletins as the Chief of Service may direct.

ABSTRACTION OF VALUABLE CONSTITUENTS

161.10 When wholly abstracted. A valuable constituent will be considered as wholly abstracted from an article whenever the designation of the article imports its presence therein and the constituent has been wholly omitted therefrom, in the preparation of the article, or has been wholly removed from the completed article.

161.11 When partly abstracted. A valuable constituent will be considered as partly abstracted from an article whenever the designation of the article imports its presence therein and the constituent is not present in the usual or customary amount or in the amount indicated on the label.

LABELING

161.12 Statements on label. Statements on labels must conform to the following requirements:

(a) To be in English language. All words, statements, and other information required by the Act to appear on the label shall be in the English language.

(b) Ingredient statement. The ingredient statement, where required on labels of insecticides and fungicides, shall: (1) be placed on that part of the label of each individual package or container (and also on the carton or outer container, if there is one) which is presented or displayed under customary conditions of purchase; (2) run parallel with other printed or reading matter on the label; (3) not be materially less conspicuous than any other word, statement, or information on the label; (4) be on a clear, contrasting background and not obscured by designs or vignettes, or crowded with other written, printed, or graphic matter; (5) give the specific names by which the ingredient is commonly known, other than a trade name or collective name, or, if it does not have such a name, its correct chemical name; (6) give equal prominence to the names of the ingredients where more than one is present; (7) give single values for the percentages of the ingredients and shall not use a sliding scale form of statement; and (8) show the term "Inert Ingredient" in type and position equally as conspicuous as the term "Active Ingredient" when both these terms are used.

(c) Phenol coefficient statement. If a label of a disinfectant bears a phenol coefficient statement it shall not be in a sliding scale form.

(d) False and misleading statements. The use of any false or misleading statement on any part of the label or labeling, given as the statement or opinion of an expert or other person or based on such statement or opinion, shall not be justified, nor may such statement be justified by any descriptive matter explaining the use of the false or misleading statement.

Any statement on the label or labeling, either directly or indirectly implying that the product is recommended or endorsed by any agency of the Federal Government, is considered misleading.

161.13 When labels are required. Whenever, by the terms of the Act, information is required to be on the label of an insecticide or fungicide, a label must be placed on the article or its container in order that the statement can be made. The omission of a label will not excuse the absence of the required statement.

161.14 Name and address of manufacturer - (a) True name and place. The name of the manufacturer or producer or the place of manufacture need not be given upon the label, but, if given, it must be the true name and true place. The words "Packed for * * *," "Distributed by * * *," or some equivalent phrase, shall be added to

the label in case the name which appears upon the label is not that of the actual manufacturer or producer.

(b) When more than one place of manufacture. When a person actually manufactures or produces an insecticide, fungicide, paris green, or lead arsenate, in two or more places, the actual place of manufacture or production of each particular package need not be stated on the label except when, under the peculiar circumstances of the particular case, the mention of any such place to the exclusion of the others may mislead the public.

(c) Geographical name. The use of a geographical name on the label of an insecticide or fungicide will not be considered misbranding when, by reason of long usage, it has come to represent a generic term and indicates a style, type, or brand, or a specific substance rather than the place of manufacture, but in all such cases the place where any such article is manufactured or produced shall be stated on the principal label.

GUARANTY

161.15 Guaranty against adulteration and misbranding. The following provisions apply to the furnishing and use of the guaranty:

(a) To dealer. Any wholesaler, manufacturer, jobber, or other person residing in the United States may furnish to any person to whom he sells any insecticide, paris green, lead arsenate, or fungicide, a guaranty that such article is not adulterated or misbranded within the meaning of the Act.

(b) Essential wording. Each guaranty to afford protection shall be signed by, and shall contain the name and address of, the wholesaler, manufacturer, jobber, or other person residing in the United States who sold the article, and it shall be stated in the guaranty that such article or articles are not adulterated or misbranded within the meaning of the Act. The guaranty shall not appear on the labels or packages.

(c) Holder not to be prosecuted. No dealer in insecticides, paris greens, lead arsenates, or fungicides will be liable to prosecution if he can establish that the articles were sold under a guaranty given in compliance with the regulations in this part.

IMPORTS

161.16 Declaration. All invoices of insecticides, paris greens, lead arsenates, and fungicides imported into the United States shall be accompanied by a declaration of the shipper, made before a United States consular officer, as follows:

I, , the undersigned
(Name in full)
do hereby declare that I am the
(Manufacturer
..... of the merchandise herein mentioned, which
or shipper)
consists of insecticides, paris greens, lead arsenates, or fungicides. None of this merchandise is falsely labeled in any respect, or dangerous to the health of the people of the United States, or forbidden entry into, or sale in, or restricted in sale in, the country in which it is made or from which it is exported. The merchandise was manufactured in
(Country)
by and is exported from
(Name of manufacturer)
..... consigned to
(City) (City)
Dated at this
day of , 19....
.....
(Signature)

161.17 Notice of shipments for importation. The collector of customs shall notify the Agricultural Marketing Service of the United States Department of Agriculture of all shipments of insecticides and fungicides being imported into the United States and shall detain all such shipments until notified by the Agricultural Marketing Service that the shipment may be released.

161.18 Drawing of samples of import shipments. The collector of customs shall, on request of the Agricultural Marketing Service of the United States Department of Agriculture, draw samples of import shipments of insecticides and fungicides and deliver them together with a copy of the labeling and all accompanying circulars and advertising matter pertaining to the goods to the designated laboratory of the Agricultural Marketing Service.

161.19 Bond for release of imports pending examination. Consignments of insecticides, paris greens, lead arsenates, or fungicides, offered for importation into the United States may be detained pending examination to determine whether they are adulterated or misbranded, or they may be released to the consignee prior to such examination upon the execution on the appropriate form of a customs single-entry or term bond in such amount as is prescribed for such bonds in the customs regulations in force on the date of entry and containing a

condition for the redelivery of the merchandise or any part thereof upon demand of the collector of customs at any time. The bond shall be filed with the collector of customs, who, in case of default, shall take appropriate action to effect the collection of liquidated damages as provided for in the bond.

161.20 Procedure after examination.

(a) If, upon examination or analysis of a sample from an import consignment of insecticides, paris greens, lead arsenates, or fungicides, (1) it is found not to be adulterated or misbranded, the Agricultural Marketing Service shall notify the collector of customs that the shipment may be released; (2) but if the consignment is found to be adulterated or misbranded the owner or consignee shall be promptly notified by the Agricultural Marketing Service of the nature of the charge in order that he may be given an opportunity to show cause why the shipment should not be destroyed or refused entry.

(b) A reasonable time will be allowed the owner or consignee to submit evidence for consideration in connection with charges of adulteration or misbranding.

(c) If, after consideration of all of the evidence in the case, it still appears that the consignment may not be lawfully admitted into the United States, the Agricultural Marketing Service shall notify the collector of customs that the product is adulterated or misbranded under the Act and the Secretary of the Treasury (1) shall refuse delivery to the consignee and, under such regulations as the Secretary of the Treasury may prescribe, shall cause the destruction of any goods not exported by the consignee within three months from the date of notice of such refusal of entry, or (2) if the shipment has been released to the consignee on bond, action will be taken to enforce the terms of the bond.

Done at Washington, D. C., this 23d day of September 1941.

Witness my hand and seal of the Treasury Department.

Herbert E. Gaston,
Acting Secretary of the Treasury.

Witness my hand and seal of the Department of Agriculture.

(Seal) Grover B. Hill,
Acting Secretary of Agriculture.

Witness my hand and seal of the Department of Commerce.

Wayne C. Taylor,
Acting Secretary of Commerce.

